

cess, or by the help of any other tribunal, so they be competent, credible, and pertinent.

This bill does, in effect, perform the office of a summons for witnesses to attend and testify before the Court by which the plaintiff's case is to be tried and determined. It collects evidence to be used in that Court, in like manner, as the testimony of witnesses who may be brought before it, and sworn to speak the truth, the whole truth, and nothing but the truth. Looking to the general character of unreserved fulness and frankness, always expected from, and so commonly attributed to answers to bills in Chancery; if these defendants were to stop short with a bare response to the plaintiff's interrogatories, and fail to set forth, in their answer, the matters necessary in any way to their defence at law, it might, perhaps, be objected in the Court of common law, as it certainly might well be insisted upon here, on a hearing with a view to relief, that they should be allowed to offer no proof in relation to any defence which they had failed to rely upon in their answer; upon the ground that when called on to shew their defence, * they had tacitly waived all such matters as were not set forth in their answer. **400**

And besides, it is certain that a mere bill of discovery may be so amended, after the defendant has answered, as to pray for relief in this Court; and it is an established rule, that in answering even such an amended bill, the defendant must confine himself to it alone, and cannot be permitted to put in a complete answer over again; and therefore, it is not only allowable, but necessary for the defendant's own safety, that he should set forth and rely upon his defence in his answer to such an original bill, lest it should be so amended as to make it necessary for him to sustain such a defence even in this Court. *Hildyard v. Cressy*, 3 Atk. 303.

I am, therefore, satisfied that a defendant, in making answer to a mere bill of discovery, must be permitted to introduce all matters in avoidance; and to take as wide a range, over the whole case, as would be allowed to him if the bill prayed for relief from this Court as well as discovery; and that there is, in this respect, no material difference between a mere bill of discovery and a bill for relief.

This then is a case in which the plaintiff excepts to the defendants' answer; because it sets forth various matters which are impertinent; and also, because it attempts to control a written by a verbal contract.

It has always been the practice in this Court, in all cases where either party excepts to the pleadings for impertinence, scandal, or insufficiency, to file the exceptions in writing, and then move for an order appointing a day for the hearing, on notice to the opposite party, or his solicitor. And all such exceptions, in the same case, may be brought to a hearing at the same time and